

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Elaine Wilson)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:16-cv-436
)	
Blue Cross Blue Shield of Texas, a Division)	
of Health Care Service Corporation,)	
)	
Defendant)	

APPENDIX TO NOTICE OF REMOVAL

Defendant Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation (“BCBSTX”), respectfully files the following Appendix to Notice of Removal.

- Exhibit 1: Docket Sheet from Case No. 2016-01944; Elaine Wilson v. Blue Cross Blue Shield of Texas; In the 133rd District Court, Harris County, Texas.
- Exhibit 2: Original Citation in Case No. 2016-01944, issued January 12, 2016.
- Exhibit 3: Original Petition in Case No. 2016-01944, filed January 12, 2016.
- Exhibit 4: Original Answer in Case No. 2016-01944, filed February 12, 2016.
- Exhibit 5: Declaration of Andrew F. MacRae
- Exhibit 6: List of all counsel of record

HCDistrictclerk.com

WILSON, ELAINE vs. BLUE CROSS AND BLUE
SHIELD OF TEXAS (A D
Cause: 201601944 CDI: 7 Court: 133

2/18/2016

JUDGMENT/EVENTS

Date	Description	Order Signed	Post Jdgm	Pgs /Page	Volume Filing Attorney	Person Filing
2/12/2016	ANSWER ORIGINAL PETITION			0	MACRAE, ANDREW F	BLUE CROSS AND BLUE SHIELD OF TEXAS (A DIVISION OF HEALTH CARE SERVICE
1/12/2016	JURY FEE PAID (TRCP 216)			0		
1/12/2016	ORIGINAL PETITION			0	DAVIS, JOSHUA P	WILSON, ELAINE

EXHIBIT 1

CAUSE NO. 201601944

RECEIPT NO.

0.00

ATY

TR # 73205949

PLAINTIFF: WILSON, ELAINE

vs.

DEFENDANT: BLUE CROSS AND BLUE SHIELD OF TEXAS (A DIVISION OF
HEALTH CARE SERVICEIn The 133rd
Judicial District Court
of Harris County, Texas
133RD DISTRICT COURT
Houston, TX

CITATION

THE STATE OF TEXAS
County of HarrisTO: BLUE CROSS AND BLUE SHIELD OF TEXAS (A DIVISION OF HEALTH CARE SERVICE
CORPORATION) BY SERVING ITS AGENT FOR SERVICE CORPORATION SERVICE COMPANY
211 EAST 7TH STREET SUITE 620 AUSTIN TX 78701 - 3218Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSUREThis instrument was filed on the 12th day of January, 2016, in the above cited cause number
and court. The instrument attached describes the claim against you.YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a
written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday
next following the expiration of 20 days after you were served this citation and petition,
a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 12th day of January, 2016, under my hand and
seal of said Court.Issued at request of:
DAVIS, JOSHUA P
1010 LAMAR, SUITE 200
HOUSTON, TX 77002
Tel: (713) 337-4100
Bar No.: 24055379*Chris Daniel*CHRIS DANIEL, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Generated By: CUERO, NELSON 7MM//10283632

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at 9:07 o'clock A.M., on the 15th day of January, 2016.Executed at (address) 211 East 7th Street Austin Tx 78701 inCounty at o'clock M., on the 15th day of January,
2016, by delivering to Blue Cross + Blue Shield defendant, in person, atrue copy of this Citation together with the accompanying copy(ies) of the Petition

attached thereto and I endorsed on said copy of the Citation the date of delivery.

To certify which I affix my hand officially this day ofCERTIFIED MAIL 7006 2760 0002 56577273FEE: \$ of County, TexasBy
Deputy*B. J. Howard*
5CH10316 Affiant EXP 5-31-16On this day, , known to me to be the person whose
signature appears on the foregoing return, personally appeared. After being by me duly sworn,
he/she stated that this citation was executed by him/her in the exact manner recited on the
return.SWORN TO AND SUBSCRIBED BEFORE ME, on this day of , .
Notary Public

N.INT.CITR.P

73205949

EXHIBIT 2

1/12/2016 3:34:15 PM
Chris Daniel - District Clerk Harris County
Envelope No. 8578497
By: Nelson Cuero
Filed: 1/12/2016 2:54:07 PM

2016-01944 / Court: 133
CAUSE NO. _____

ELAINE WILSON,
Plaintiff.

vs.

BLUE CROSS AND BLUE SHIELD
OF TEXAS, A DIVISION OF
HEALTH CARE SERVICE
CORPORATION

Defendant.

§
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§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

Plaintiff, Elaine Wilson, files this Original Petition and Request for Disclosure complaining of Defendant, Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation ("BCBS") and in support thereof shows the Court and the jury the following:

DISCOVERY CONTROL PLAN

1. Plaintiff intends that discovery be conducted under Discovery Level 3 and requests the Court issue a Scheduling Order.

PARTIES

2. Plaintiff is an individual located in Harris County, Texas.

3. Defendant BCBS is an insurance company licensed to do business in the State of Texas, and may be served with process by serving its agent for service, Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this controversy because the damages sought by Plaintiff are within the jurisdictional limits of this Court.

EXHIBIT 3

5. The Court has jurisdiction over certain parties because they are companies doing business in Texas and/or individuals who reside in Texas.

6. Venue is proper in this county because the facts giving rise to this litigation occurred in Harris County.

FACTUAL BACKGROUND

7. Plaintiff is part of a BCBS group health insurance plan, group number 110542 (the "Policy"). From August 2014 through December 2014, Plaintiff's doctors diagnosed her with several serious health conditions that required multiple surgeries, including a permanent repair of a failed paraesophageal hernia, nissen fundoplication, and esophagitis. Plaintiff's doctors submitted requests to BCBS for preapproval of these procedures. Despite the apparent serious nature of Plaintiff's health condition, BCBS denied coverage for all procedures, claiming the operations were for treatment of only obesity or weight and therefore not covered. It appears that BCBS's denial of coverage was due in whole or in part by Plaintiff's doctors' mistaken use of an incorrect code in requesting preapproval.

8. On or about January 22, 2015, Plaintiff submitted a formal appeal to BCBS challenging its denial of coverage and notifying BCBS of the incorrect code used in the preapproval process. Despite being on notice that the wrong code was used and that the requested procedures were not to correct obesity or weight but rather to address serious health conditions, BCBS denied Plaintiff's request for an appeal of the coverage decision. Ignoring the information it had received from Plaintiff and her doctors, BCBS maintained that the requested procedures were not covered.

9. On February 18, 2015, Plaintiff received another letter from BCBS informing her that her appeals process had been exhausted. In its letter, BCBS referred to Plaintiff's "employer plan" and offered to provide a copy of the plan to Plaintiff upon request. Plaintiff then sent a formal request for the referenced plan to BCBS so that she may continue to pursue her rights under her health insurance policy, but the plan was never provided to her.

10. As a result of BCBS's continued failure to approve the procedures Plaintiff required to address her covered serious health conditions, Plaintiff was forced to pay for the procedures out of pocket. BCBS, by its conduct, has breached its common law and statutory duties to Plaintiff, resulting in significant damages to Plaintiff.

CLAIMS

Negligent Misrepresentation

11. Plaintiff sues Defendant for negligent misrepresentations. Defendant, either individually or through its authorized agents, employees or representatives, solicited Plaintiff's business and made several false representations regarding BCBS's readiness, willingness and ability to fulfill the terms and duties placed on it by terms of Plaintiff's insurance agreement. These representations led Plaintiff to rely upon BCBS and were a material basis for her decision to enter the policy. Absent the misrepresentations made by BCBS, or its authorized agents, employees or representatives, Plaintiff would not have entered the policy with BCBS. Defendant either knew, or should have known, that these representations were false and made for the purpose of deceiving Plaintiff so that it would rely on said misrepresentations to Plaintiff's detriment. As such, BCBS's

misrepresentations have caused Plaintiff to suffer damages for which she now seeks compensation.

Breach of Good Faith and Fair Dealing

12. Defendant, as Plaintiff's insurance company, at all times during the claims process owed a duty of good faith and fair dealing. Defendant's acts and omissions violated that duty and Plaintiff was damaged as a result.

Breach of Contract

13. Defendant, through its various contractual relationships with Plaintiff, breached its contracts with Plaintiff through its acts and omissions, and has caused damages to Plaintiff that are greater than the jurisdictional limits of this Court.

Money Had & Received/Unjust Enrichment

14. Defendant, by refusing to present Plaintiff with her rightful insurance proceeds stemming from her claim, has caused Plaintiff to suffer an unconscionable loss, and Defendant is unjustly enriched as a result.

Negligence

15. At all times Defendant owed the duty of reasonable care to Plaintiff. Defendant, through its acts and omissions, has breached that duty of care and caused damages to Plaintiff that are greater than the minimal jurisdictional limits of this Court.

Texas Insurance Code §§ 541.060 and 541.152

16. Defendant violated numerous provisions of the TEXAS INSURANCE CODE, Article §541.060 that include:

- a. misrepresenting to a claimant a material fact or policy provision relating to coverage at issue;

- b. failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of:
 - i. a claim with respect to which the insurer's liability has become reasonably clear; or
 - ii. a claim under one portion of a policy with respect to which the insurer's liability has become reasonably clear to influence the claimant to settle another claim under another portion of the coverage unless payment under one portion of the coverage constitutes evidence of liability under another portion;
- c. failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;
- d. failing within a reasonable time to:
 - i. affirm or deny coverage of a claim to a policyholder; or
 - ii. submit a reservation of rights to a policyholder;
- e. refusing, failing, or unreasonably delaying a settlement offer under applicable first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy; and,
- f. refusing to pay a claim without conducting a reasonable investigation with respect to the claim;

TEX. INS. CODE ANN. § 541.060 (Vernon).

17. Defendant's violation of this provision caused damages to Plaintiff that are greater than the minimal jurisdictional limits of this Court. Plaintiff is entitled to relief in accordance with Articles §541.152(a) of the TEXAS INSURANCE CODE.

18. Plaintiff is also entitled to additional damages pursuant to Article §541.152(b) because Defendant violated that statute knowingly.

DAMAGES

19. As a direct and proximate result of the acts, omissions, breaches and violations more fully described above, Plaintiff has been damaged by Defendant's acts and/or omissions and those damages are within the jurisdictional limits of this Court.

20. Ultimately, Plaintiff will ask a jury of her peers to assess a fair and reasonable amount of money damages as compensation for her economic and non-economic injuries, as well as punishment for Defendant's actions. These damages will include statutory penalty interest and consequential damages. Additionally, Plaintiff seeks pre- and post-judgment interest, costs of court, and reasonable and necessary attorney's fees.

EXEMPLARY DAMAGES

21. Defendant's actions as described above were intentional and made with knowing disregard for Plaintiff's rights and/or with malice towards Plaintiff. Plaintiff prays for punitive damages in addition to compensatory damages.

ATTORNEY'S FEES

22. Plaintiff has been required to obtain legal counsel as a result of Defendant's intentional acts and omissions. As a result, Plaintiff has and will incur attorney's fees and

expenses prosecuting her claims. Plaintiff is therefore entitled to recover her reasonable and necessary attorney's fees under both the TEXAS INSURANCE CODE and TEX. CIV. PRAC. & REM. CODE ANN. § 38.001 *et seq.*

CONDITIONS PRECEDENT

23. All necessary conditions precedent to the filing of this suit have been, or will be, met as required by law.

JURY DEMAND

24. Plaintiff demands a trial by jury, and includes the appropriate fee herein.

REQUEST FOR DISCLOSURE

25. Plaintiff requests that Defendant disclose within 50 days of the receipt of this suit the information listed in TEXAS RULE OF CIVIL PROCEDURE 194.2 (a) – (l).

CONCLUSION

Plaintiff, Elaine Wilson, requests that Defendant, Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation, be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for Plaintiff against Defendant for the following:

- a. Actual and consequential damages;
- b. Punitive and additional damages;
- c. Statutory interest of 18%;
- d. Attorney's fees and expenses;
- e. Pre- and post-judgment interest at the maximum legal rate;
- f. Costs of suit; and,

- g. All other and further relief, at law or in equity, to which Plaintiff may show herself justly entitled.

Respectfully submitted,

JOSH DAVIS LAW FIRM

By: /s/ J. P. Davis

Joshua P. Davis

State Bar No. 24055379

1010 Lamar, Suite 200

Houston, Texas 77002

(713) 337-4100/Phone

(713) 337-4101/Fax

josh@thejdfirm.com

Attorney for Plaintiff

CAUSE NO. 2016-01944

ELAINE WILSON)	IN THE DISTRICT COURT
)	
Plaintiff)	
v.)	
)	HARRIS COUNTY, TEXAS
BLUE CROSS BLUE SHIELD)	
OF TEXAS, A DIVISION OF HEALTH)	
CARE SERVICE CORPORATION)	
)	
Defendant)	133 RD JUDICIAL DISTRICT

ORIGINAL ANSWER

Defendant Blue Cross Blue Shield of Texas, a division of Health Care Service Corporation, a Mutual Legal Reserve Company ("BCBSTX") files the following Original Answer to Plaintiff's Original Petition.

General Denial

BCBSTX enters a General Denial pursuant to Rule 92.

WHEREFORE, PREMISES CONSIDERED, Defendant Blue Cross Blue Shield of Texas requests that Plaintiff take nothing by her suit, and that BCBSTX be awarded its costs of court. BCBSTX further requests such other relief, both legal and equitable, to which it may show itself justly entitled.

EXHIBIT 4

Respectfully submitted,

By: /s/ Andrew F. MacRae

ANDREW F. MACRAE

State Bar No. 00784510

LEVATINO|PACE LLP

1101 S. Capital of Texas Highway

Building K, Suite 125

Austin, Texas 78746

Tel: (512) 637-1581

Fax: (512) 637-1583

andrew@lpfirm.com

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Original Answer has been forwarded to all parties and/or counsel of record, via facsimile and/or electronic filing, this 12th day of February, 2016, as follows:

Joshua P. Davis
Josh Davis Law Firm
1010 Lamar, Suite 200
Houston, Texas 77002

/s/ Andrew F. MacRae

Andrew F. MacRae

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Elaine Wilson

Plaintiff,

vs.

Blue Cross Blue Shield of Texas, a Division
of Health Care Service Corporation,

Defendant

Case No. 4:16-cv-436

DECLARATION OF ANDREW F. MacRAE

STATE OF TEXAS §

COUNTY OF TRAVIS §

1. My name is Andrew F. MacRae. I am over the age of eighteen (18) years and fully competent in all respects to make this Declaration. I have personal knowledge of the facts stated herein and they are true and correct. I am counsel of record for Blue Cross Blue Shield of Texas, a Division of Health Care Service Corporation.

2. On December 31, 1998, Blue Cross Blue Shield of Texas, Inc. merged with Blue Cross Blue Shield of Illinois into Health Care Service Corporation ("HCSC"), which is a Mutual Legal Reserve Company. HCSC is an Illinois corporation, with its principal place of business in Chicago, Illinois. Since December 31, 1998, Blue Cross Blue Shield of Texas ("BCBSTX") has been, and still is, a division of HCSC.

3. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 19, 2016.

/s/ Andrew F. MacRae
Andrew F. MacRae

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Elaine Wilson)	
)	
Plaintiff,)	
)	
vs.)	4:16-cv-436
)	
Blue Cross Blue Shield of Texas, a Division)	
of Health Care Service Corporation,)	
)	
Defendant)	

LIST OF ALL COUNSEL OF RECORD

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Julie B. Tebbets
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Defendant's Counsel:

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Austin, Texas 78746
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EXHIBIT 6

Respectfully submitted,

By: /s/ Andrew F. MacRae
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Attorneys for Defendant